

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 14, 2023

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 Unless other arrangements have been made in advance with the Court, all appearances for this calendar will be via Zoom and not via Court Call. [See Judge Kaufman's posted procedures titled "phone/video appearances" on the Court's webpage.]
All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:21-11709 7590 La Jolla, LLC.

Chapter 7

#1.00 Motion for relief from stay [RP]

RICHARD MARSHACK, CH. 7 TRUSTEE OF THE AB CAPITAL, LLC
BANKRUPTCY ESTATE
VS
DEBTOR

fr. 5/31/23

Docket 128

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

7590 La Jolla, LLC.

Represented By
Peter M Lively

Movant(s):

Richard Marshack

Represented By
Marc A Lieberman

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CONT... 7590 La Jolla, LLC.

Chapter 7

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jessica Wellington

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1:22-10091 Lois Ann Harris

Chapter 13

#2.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS.
DEBTOR

fr. 5/10/23

Stip resolving motion filed 5/25/23.

Docket 78

***** VACATED *** REASON: Order approving stipulation entered
5/30/23.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lois Ann Harris

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon,

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:22-11162 Gustavo Ruiz

Chapter 11

#3.00 Motion for relief from stay [RP]

HOF GRANTOR TRUST 5, A DELAWARE TRUST
VS
DEBTOR

fr. 4/4/23; 4/25/23; 5/10/23(stip)

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gustavo Ruiz

Represented By
Onyinye N Anyama

Movant(s):

HOF Grantor Trust 5, a Delaware

Represented By
Daniel I Singer

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1:23-10264 Marlon Javier Alonzo

Chapter 7

#4.00 Motion for relief from stay [UD]

WELLEAD, LLC
VS.
DEBTOR

Docket 18

***** VACATED *** REASON: Case dismissed on 5/26/23.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marlon Javier Alonzo

Pro Se

Movant(s):

Wellead, LLC

Represented By
David S Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:23-10632 Siranush Amirkhanyan and Vardan Barsamyan

Chapter 7

#5.00 Motion for relief from stay [UD]

VAGE PILIPOSYAN
VS
DEBTOR

Docket 13

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtors for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

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CONT... Siranush Amirkhanyan and Vardan Barsamyan

Chapter 7

Debtor(s):

Siranush Amirkhanyan

Pro Se

Joint Debtor(s):

Vardan Barsamyan

Pro Se

Movant(s):

VAGE PILIPOSYAN

Represented By
Helen G Long

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:22-11453 Livio Ernesto Gomez

Chapter 7

#6.00 Motion for relief from stay [AN]

JESSICA BALINT
VS
DEBTOR

Docket 22

Tentative Ruling:

For the reasons discussed below, pursuant to 11 U.S.C. § 362(d)(1), the Court will grant movant relief from the automatic stay to proceed with the pending litigation in the nonbankruptcy forum.

I. BACKGROUND

On December 16, 2022, Livio Ernesto Gomez ("Debtor") filed a voluntary chapter 7 petition. In his schedule E/F, Debtor listed Jessica Balint ("Movant") as an unsecured creditor with a claim in an unknown amount. The deadline in Debtor's case for creditors to file a complaint to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4) or (6) was March 21, 2023. *See* Notice of Chapter 7 Bankruptcy Case [doc. 7].

Before Debtor filed his chapter 7 petition, on August 17, 2020, Movant filed a complaint in the Superior Court of California, County of Los Angeles against Debtor regarding an assault that occurred while Debtor and Movant were in New York (the "State Court Action").

In the complaint filed in the State Court Action, Movant alleges personal injury claims including negligence, assault and battery, negligent infliction of emotional distress and intentional infliction of emotional distress. With respect to the claim of assault and battery, the complaint states:

Defendant Livio E. Gomez physically attacked Plaintiff, Jessica Balint, without Plaintiff's consent, causing serious bodily injuries to Plaintiff. As a

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result of the thorough, continued and repeated blows and kicks to Plaintiff's body, head, face, breast, chest, legs, and back, Plaintiff lost consciousness and lost control of her bodily functions and required hospitalization. . . . Plaintiff required corrective surgery of her broken nose and she will need further surgeries. Plaintiff's so far incurred hospitalization, surgical procedures, physical and mental health care expenses are in excess of \$125,000.00. Plaintiff suffers from memory loss and loss of concentration as a result of her head/brain injuries. Plaintiff still has head, neck, back, and leg pain, and still has not recovered from her various bodily and psychological/emotional injuries.

Exh. 1 to the Declaration of Gabor Szabo ("Szabo Decl."). The trial in the State Court Action was scheduled for January 9, 2023. Szabo Decl., para. 7. Discovery was completed and closed, and the parties were preparing for the final status conference. *Id.* Movant's state court counsel represents that "the case was and is ready for trial and the determination of the amount of Plaintiff's damages against Debtor. The trial could be reset and judgment could be entered in a matter of weeks in the [State Court Action]." *Id.*

On February 3, 2023, Movant initiated an adversary proceeding against Debtor, i.e., 1:23-ap-01002-VK (the "Adversary Proceeding"). In her complaint, Movant seeks a determination that the debt owed to her by Debtor is nondischargeable under 11 U.S.C. § 523(a)(6).

On May 23, 2023, Movant filed and served on debtor and his bankruptcy counsel a *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)* (the "Motion") [doc. 22]. In the caption of the Motion, Movant set forth an incorrect hearing date of May 31, 2023. Attached to the Motion is the complaint filed in the State Court Action.

On May 25, 2023, Movant filed an amended notice regarding the Motion (the "Amended Notice") [doc. 24]. The Amended Notice includes a correct hearing date of June 14, 2023.

In the Motion, Movant alleges there is cause to grant relief from stay on the following grounds: (i) mandatory abstention applies under 28 U.S.C. § 1334(c)(2); (ii) the

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claims are personal injury claims which are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum; (iii) the claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum; and (iv) the case was filed in bad faith, e.g., movant is one of very few creditors listed in Debtor's case commencement documents.

On May 31, 2023, Debtor filed an opposition to the Motion (the "Opposition") [doc. 26]. On May 31, 2023, Debtor also filed a declaration [doc. 27], evidentiary objections to the declaration of Movant's state court counsel Gabor Szabo [doc. 28] and a request for judicial notice [doc. 29]. In the Opposition, Debtor alleges the Motion should be denied because (i) the Motion was not properly served; (ii) Movant consented to the Court's jurisdiction because she initiated the Adversary Proceeding; (iii) the Motion is not supported by evidence; and (iv) Movant has not demonstrated cause. On June 6, 2023, Movant filed a reply [doc. 31].

II. DISCUSSION

A. Notice

Debtor asserts the Motion must be denied because he did not receive proper notice of the hearing. Although Movant served the Motion on Debtor on May 23, 2023, the Motion included an incorrect hearing date. Subsequently, Movant filed and served the Amended Notice.

The Amended Notice was filed and served on May 25, 2023, which is less than 21 days before the hearing. Nonetheless, Debtor timely filed his Opposition on May 31, 2023, as well as a declaration in support of the Opposition, evidentiary objections and a request for judicial notice. Therefore, it appears that Debtor did not suffer any prejudice from this procedural deficiency.

B. Jurisdiction of the Court

28 U.S.C. § 157(b)(1) provides:

Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred

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under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

Core proceedings do not include "the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11." *In re Gordon*, 646 B.R. 903, 906 (Bankr. D. Idaho 2022) (finding that the liquidation and estimation of personal injury tort claims is a non-core matter and therefore granted relief from stay to permit the parties to return to the district court to liquidate the claims). Under 28 U.S.C. § 157(b)(5), personal injury tort claims shall be "tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claims arose, as determined by the district court in which the bankruptcy case is pending." *Id.*

Movant has alleged claims for negligence, assault and battery, negligent infliction of emotional distress and intentional infliction of emotional distress. Debtor does not dispute that the alleged claims are personal injury torts for purposes of 28 U.S.C. § 157.

In connection with the type of personal injury claims asserted in the State Court Action, this Court cannot enter final judgment concerning the allowed amount of the claim. *See Gordon*, 646 B.R. at 907 ("despite the presence of a pending adversary action concerning the same claims, if Creditor's claims are personal injury torts, the Court does not have authority to enter final judgment as to the liquidation or estimation of such claims").

Debtor asserts that because Movant initiated the Adversary Proceeding, Movant has consented to this Court's jurisdiction to liquidate her claim. However, Movant's filing of a nondischargeability complaint, before the deadline to do so, does not constitute Movant's consent to this Court's determination and liquidation *of the amount of* Movant's claim, based on personal injury torts.

C. Permissive Abstention

11 U.S.C. § 362(a) provides, in relevant part:

Except as provided in subsection (b) of this section, a petition filed

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under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .

Under 11 U.S.C. § 362(d)(1), a court may grant relief from the automatic stay "for cause." "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Merriman v. Fattorini (In re Merriman)*, 616 B.R. 381, 387 (9th Cir. BAP 2020) (finding cause to grant relief from stay to allow claimant to proceed with state court wrongful death lawsuit against debtor), also citing *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. BAP 2009). "The Ninth Circuit [Court of Appeals] has noted that cause may exist when 'a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues.'" *Gordon*, 646 B.R. at 908, quoting *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990) (holding that the bankruptcy court abused its discretion by not abstaining from case involving state law questions that predominate over bankruptcy issues).

28 U.S.C. § 1334(c)(1) states that "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." Courts consider several factors which suggest the appropriateness of permissive abstention, and in turn relief from stay to permit litigation to continue in a different jurisdiction. These factors include:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other

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nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1167.

Here, the factors weigh in favor of permissive abstention. Among other things, regarding the liquidation of Movant's personal injury tort claims, state laws predominate over bankruptcy issues. Furthermore, the matter will move forward expeditiously in the State Court Action; Movant asserts that discovery was completed before Debtor filed his chapter 7 petition and that the State Court Action had been scheduled to proceed to trial on January 9, 2023. Allowing the State Court Action to continue will result in a more expeditious and conclusive determination of the amount of Movant's claim.

III. CONCLUSION

In light of the foregoing, the Court will abstain and grant the Motion. Movant has shown sufficient cause under 11 U.S.C. § 362(d)(1) to warrant granting relief from the automatic stay for Movant to proceed against Debtor in the State Court Action.

Ruling regarding Debtor's evidentiary objections to the identified paragraphs in the Declaration of Gabor Szabo set forth below:

Para. 6(e)(2), p. 9: overruled

Para. 3, lines 13-16, p. 22: overruled

Para. 4, lines 17-20, p. 22: overruled

Para. 5, line 21, p. 22: sustained

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Para. 6, lines 22-27, p. 22: sustained as to "suffered from emotional trauma,
pain and suffering, social anxiety."

Para. 7, line 28, p. 22 and lines 1-3, p. 23: overruled

Movant must submit an order within seven (7) days.

Party Information

Debtor(s):

Livio Ernesto Gomez

Represented By
Robert M Yaspan

Movant(s):

Jessica Balint

Represented By
Gabor Szabo

Trustee(s):

David Seror (TR)

Pro Se

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1:23-10596 Rolando Enrique Flores

Chapter 7

#7.00 Motion for relief from stay [PP]

TD Bank, N.A.
VS.
DEBTOR

Docket 17

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Rolando Enrique Flores

Represented By
Christopher J Lauria

Movant(s):

TD Bank, N.A., successor in interest

Represented By
Sheryl K Ith

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CONT... Rolando Enrique Flores

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:23-10661 Kimberly Michelle VanHeertum

Chapter 7

#8.00 Motion for relief from stay [RP]

COASTAL CAPITAL GROUP, LLC
VS
DEBTOR

Docket 7

Tentative Ruling:

Unless an appearance is made at the hearing on June 14, 2023, the hearing is continued to July 12, 2023 at 9:30 a.m.

Under Local Bankruptcy Rule 4001-1(c)(1)(C)(i), the movant must serve the motion on the debtor and debtor's attorney (if any). Based on the filed proof of service, the debtor was served at 19448 Kittridge Street, Reseda, California **9335**. The zip code is incorrect.

No later than June 16, 2023, the movant must reserve the notice and the motion on the debtor at the correct zip code as reflected on the docket.

Party Information

Debtor(s):

Kimberly Michelle VanHeertum Pro Se

Movant(s):

Coastal Capital Group LLC Represented By
Martin W. Phillips

Trustee(s):

Diane C Weil (TR) Pro Se

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1:23-10744 Jiran Saevitzon

Chapter 13

#8.01 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate
4244 Woodcliff Rd, Sherman Oaks, CA 91403.

Docket 8

Tentative Ruling:

Deny as moot.

On April 12, 2023, the debtor was granted a discharge in the debtor's preceding chapter 7 case, 1:23-bk-10744, which the debtor filed on November 16, 2022. 11 U.S.C. § 362(c)(3) pertains only to cases pending within the preceding one-year period that have been **dismissed**. Because the debtor's preceding chapter 7 case, through which he obtained a discharge, was not dismissed, the provisions of 11 U.S.C. § 362(c)(3) do not apply.

The Court will prepare the order.

Party Information

Debtor(s):

Jiran Saevitzon

Represented By
Mark E Goodfriend

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-11850 Mariyan Khosravizadeh

Chapter 7

Adv#: 1:21-01003 Soleimanian et al v. Khosravizadeh

#9.00 Status conference re: complaint for non-dischargeability of debt pursuant to 11 U.S.C. § 523(a)(A) & 523(a)(6), and for discharge of bankruptcy pursuant to 11 U.S.C. § 727(a)(4)(A) & § 727(a)(3)

fr. 3/24/21; 11/10/21; 12/15/21; 1/26/22; 3/9/22; 4/27/22; 6/8/22; 7/13/22; 1/18/23

Docket 1

Tentative Ruling:

On October 25, 2022, the chapter 7 trustee filed a stipulation between the parties to this adversary proceeding and the chapter 7 trustee (the "Stipulation") [Bankruptcy Case No. 1:20-bk-11850-VK, doc. 138]. On October 26, 2022, the Court entered an order approving the Stipulation (the "Order") [Bankruptcy Case No. 1:20-bk-11850-VK, doc. 140].

Pursuant to the Order, the debtor must fully perform under the Stipulation by no later than July 6, 2024. In addition, the Order provides that this adversary proceeding will remain open pending the debtor's performance under the Stipulation. Therefore, the Court will continue this status conference to **1:30 p.m. on January 17, 2024.**

Appearances on June 14, 2023 are excused.

Party Information

Debtor(s):

Mariyan Khosravizadeh

Represented By
Stephen L Burton

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CONT... Mariyan Khosravizadeh

Chapter 7

Defendant(s):

Mariyan Khosravizadeh

Pro Se

Plaintiff(s):

Hamid Soleimanian

Represented By
Sanaz Sarah Bereliani

KAM LP

Represented By
Sanaz Sarah Bereliani

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:21-10179 Alex Foxman

Chapter 11

Adv#: 1:21-01014 Foxman et al v. Frandsen et al

#10.00 Status conference re: first amended complaint

fr. 6/23/21(stip); 12/15/21(stip); 3/16/22; 7/14/22; 9/21/22; 11/23/22; 2/15/23

Docket 3

Tentative Ruling:

In light of the parties' *Fifth Stipulation to Continue Hearing and Related Deadlines Regarding Confirmation of the Third Plan of Reorganization* (the "Stipulation") [Bankruptcy Case No. 1:21-bk-10179VK, doc. 365], in which the parties advised that the state court has set a trial date of October 30, 2023 to adjudicate any surviving claims in the plaintiffs' state court proceeding, and the entered order approving the Stipulation [Bankruptcy Case No. 1:21-bk-10179VK, doc. 367], the Court will continue this status conference to **1:30 p.m. on December 6, 2023**.

The parties must file a joint status report pursuant to Local Bankruptcy Rule 7016-1(a), using mandatory court form F 7016-1.STATUS.REPORT (and F 7016-1.STATUS.REPORT.ATTACH, if applicable), no later than **November 22, 2023**.

Plaintiffs must lodge the scheduling order within seven (7) days.

Appearances on June 14, 2023 are excused.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Defendant(s):

Russell Frandsen

Pro Se

Christie Frandsen

Pro Se

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CONT... Alex Foxman

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Andre Berger Pro Se

Tracy Berger Pro Se

NATIONAL ACO, LLC, a Pro Se

NACO MSO, LLC, a California Pro Se

CCM Tenn, LLC, a Tennessee Pro Se

NATIONAL CCM, LLC, a Pro Se

Joint Debtor(s):

Michal J Morey Represented By
Stella A Havkin

Plaintiff(s):

Alex Foxman Represented By
Steven A Morris
Stella A Havkin

Michal J Morey Represented By
Steven A Morris
Stella A Havkin

Trustee(s):

Susan K Seflin (TR) Pro Se

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1:22-10690 Laurie Hirsch

Chapter 7

Adv#: 1:22-01051 Furia v. Hirsch

#11.00 Pretrial conference re: complaint to determine dischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(6), (a)(2)(A) and (a)(4)

fr. 11/23/22; 5/3/23

Stipulation to dismiss filed 5/30/23

Docket 1

***** VACATED *** REASON: Order dismissing adversary proceeding entered 6/7/23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laurie Hirsch

Represented By
Sanaz Sarah Bereliani

Defendant(s):

Laurie Hirsch

Pro Se

Plaintiff(s):

Andrew Furia

Represented By
Laleh Ensafi

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, June 14, 2023

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1:30 PM

1:22-11453 Livio Ernesto Gomez

Chapter 7

Adv#: 1:23-01002 Balint v. Gomez

#12.00 Status conference re: first amended complaint for determination of dischargeability and objection to Debtor's discharge pursuant to section 523(A)(6)

fr. 5/3/23

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Livio Ernesto Gomez

Represented By
Jason Boyer

Defendant(s):

Livio Ernesto Gomez

Represented By
Jason Boyer

Plaintiff(s):

Jessica Balint

Represented By
Gabor Szabo

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:22-11514 Victor F. Alba

Chapter 11

Adv#: 1:22-01071 Victor F. Alba, individually and as Trustee of the v. Mehdiani et al

- #13.00** Status conference re: complaint:
1. To determine the nature, extent and validity of lien and declaratory judgment thereon;
 2. Financial elder abuse [Violation of California Welfare & Institutions Code §§ 15610.07, 156103.30];
 3. Breach of fiduciary duty;
 4. Concealment;
 5. Conversion;
 6. Rescission of instrument;
 7. Cancellation of instrument; and
 8. Quiet Title

fr. 2/22/23; 3/22/23; 3/30/23; 5/3/23

Docket 1

Tentative Ruling:

On May 8, 2023, the Court entered a scheduling order (the "Scheduling Order") [doc. 23]. Pursuant to the Scheduling Order, the plaintiffs were to file an amended complaint no later than May 17, 2023. As of June 7, 2023, the plaintiffs have not filed an amended complaint.

Party Information

Debtor(s):

Victor F. Alba

Represented By
Crystle Jane Lindsey

Defendant(s):

Alex Pedram Mehdiani

Pro Se

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CONT... Victor F. Alba

Chapter 11

California Prime Realty, Inc.

Pro Se

S.B.S. Trust Deed Network

Pro Se

Plaintiff(s):

Victor F. Alba, individually and as

Represented By
Crystle Jane Lindsey

The Estate of Teresita Avila Alba

Represented By
Crystle Jane Lindsey

**United States Bankruptcy Court
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1:11-13296 Ed Vallejo

Chapter 7

Adv#: 1:23-01010 Vallejo v. Federal National Mortgage Association, et al

#14.00 Defendant's Motion to Dismiss Adversary Complaint

Docket 4

Tentative Ruling:

The Court will grant the motion without leave to amend.

I. BACKGROUND

A. The Bankruptcy Case

On March 17, 2011, Ed Vallejo ("Plaintiff") filed a chapter 7 petition, initiating case no. 1:11-bk-13296-MT (the "Bankruptcy Case"). [FN 1] On June 17, 2011, the Court entered a *Discharge of Debtor* (the "Discharge Order") [Bankruptcy Case, doc. 14]. On November 30, 2011, the Bankruptcy Case was closed [Bankruptcy Case, doc. 21].

On March 28, 2023, Debtor filed a motion to reopen the Bankruptcy Case (the "Motion to Reopen") [Bankruptcy Case, doc. 22], in order for Debtor to file an adversary proceeding. On March 31, 2023, the Court entered an order granting the Motion to Reopen [Bankruptcy Case, doc. 23].

B. The Adversary Proceeding

On April 4, 2023, Plaintiff filed a complaint (the "Complaint") [doc. 1] against Federal National Mortgage Association, et al. ("Defendant"), initiating adversary proceeding no. 1:23-ap-01010-VK (the "Adversary Proceeding"). The caption of the Complaint identifies claims against Defendant for: (1) violation of the Discharge Order and the automatic stay; (2) breach of contract; and (3) quiet title/expungement of instrument. *See* Complaint. However, the body of the Complaint asserts claims against Defendant for: (1) declaratory judgment; (2) violation of 15 U.S.C. § 1602(g); and (3) violation of 11 U.S.C. § 1641(g). *Id.* In relevant part, the Complaint makes the following factual allegations:

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On or about November 10, 2004, Plaintiff obtained a loan in the amount of \$315,000 (the "Loan") from GMAC Mortgage Corporation dba Ditech.com and executed a promissory note (the "Note") to that effect. The Loan was secured by a deed of trust (the "Deed of Trust") against the real property located at 508 North California Street, Burbank, CA 91505 (the "Property"). Plaintiff resides at the Property with his wife and parents.

On or about January 1, 2005, Defendant acquired the Note and Deed of Trust. At some point, a dispute arose relating to the Loan's accounting, and Plaintiff stopped making payments. Plaintiff filed the Bankruptcy Case to stop a foreclosure on the Property. In the Bankruptcy Case, Plaintiff avoided the Deed of Trust pursuant to 11 U.S.C. § 552(f), and the Loan was discharged.

Since the Discharge Order was entered in the Bankruptcy Case, numerous strangers have attempted to collect on the Loan and have recorded void assignments against the Property. On June 20, 2016, Defendant was assigned the Note and Deed of Trust. No other party has any interest in the Property, and no other party held the Note during any relevant time.

See Complaint, ¶¶ 10-17 and 21.

On May 5, 2023, Defendant filed the Motion to Dismiss [doc. 4]. In the Motion to Dismiss, Defendant asserts that: (1) the Complaint should be dismissed for lack of jurisdiction and standing; (2) Plaintiff is judicially estopped from asserting the claims in the Complaint; (3) Defendant did not violate the discharge injunction; and (4) the Complaint fails to state claims under 15 U.S.C. §§ 1602(g) and 1641(g). Defendant also states that: (1) it has no interest in the Loan or Property; (2) it has not attempted to enforce any such interest; and (3) it is not attempting any collection or foreclosure activity.

In support of the Motion to Dismiss, Defendant attached a request for judicial notice (the "Request for Judicial Notice") [doc. 4]. In the Request for Judicial Notice, Defendant asks the Court to take judicial notice of a number of documents, including: (1) assignments of the Deed of Trust; (2) the docket report for the Bankruptcy Case; (3) the docket report for the Adversary Proceeding; and (4) a memorandum of decision on a motion to declare Plaintiff a vexatious litigant in adversary proceeding

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no. 1:20-ap-01648-SK.

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On May 22, 2023, Debtor filed *Plaintiff's Request for Discovery in order to File a First Amended Complaint (FAC) and Opposition to Defendant's Motion to Dismiss (MTD); Plaintiff's Request for an Emergency Stay Based on a Trustee Sale June 13, 2023* (the "Motion for Discovery and Emergency Stay") [doc. 10]. In the Motion for Discovery and Emergency Stay, Plaintiff states:

Plaintiff has confirmed with Defendant(s) that we will oppose the Motion to Dismiss (MTD) filed by Defendant(s) and will submit a formal written response to the MTD at least 14 days before the hearing on the Motion [to Dismiss], and will serve the response upon Adam N. Barasch, Esq., Severson & Werson, APC, 595 Market Street, Suite 2600, San Francisco, California 94105, and the Office of the United States Trustee.

Motion for Discovery and Emergency Stay, p. 3. Despite this statement, Plaintiff appears to respond to the Motion to Dismiss in the Motion for Discovery and Emergency Stay. For example, Plaintiff asserts that the Court has jurisdiction over this matter on the grounds that Defendant acquired the Loan on January 1, 2005, six years before the Bankruptcy Case was filed. *Id.* In addition, Plaintiff contends that he has standing to pursue his claims because the bankruptcy estate has been fully administered and the chapter 7 trustee abandoned the estate's assets. *Id.*, p. 4. On June 5, 2023, the Court entered an order denying Plaintiff's request for discovery and emergency stay [doc. 14].

On June 6, 2023, Defendant filed a *Reply to Plaintiff's Response to Motion to Dismiss Adversary Complaint and Response to Plaintiff's Request for a Preliminary Injunction Order Prior to Trustee's Sale June 13, 2023* [doc. 16]. As of June 7, 2023, Plaintiff has not filed a formal response to the Motion to Dismiss.

II. ANALYSIS

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible

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on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed. 2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 2d 868 (2009)).

"[Rule] 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.*

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). In addition, courts may consider "matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)

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(citations omitted).

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The party seeking dismissal under Rule 12(b)(6) has the burden of proof. *In re Reed*, 532 B.R. 82, 88 (Bankr. N.D. Ill. 2015); *In re Enron Corp.*, 316 B.R. 434, 449 (Bankr. S.D.N.Y. 2004). "A party seeking dismissal under Rule 12(b)(6) 'bears a weighty burden.'" *Reed*, 532 B.R. at 88 (citation omitted).

B. Request for Judicial Notice

Fed. R. Evid. 201(b) states, in relevant part, "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." The Court may consider the records in this Adversary Proceeding and in the Bankruptcy Case. *See The Golden Gate v. Marincovich*, 286 F. 105, 106 (9th Cir. 1923) ("Every court takes judicial notice of its own records in the same case"). In addition, the Court may consider public records. *See, e.g., Daniels Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (allowing judicial notice of publicly available information on state websites where neither party disputed the accuracy); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) ("A court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment"); *Hotel Employees & Rest. Employees Local 2 v. Vista Inn Mgmt. Co.*, 393 F.Supp.2d 972, 978 (N.D. Cal. 2005) (taking judicial notice of publicly recorded documents such as grant deeds).

"On a Rule 12(b)(6) motion to dismiss, when a court takes judicial notice of another court's opinion, it may do so 'not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.'" *Lee*, 250 F.3d at 690 (citation omitted).

As of June 7, 2023, Plaintiff has not opposed the Request for Judicial Notice. In addition, the documents contained in the Request for Judicial Notice include public records, records of the dockets for the Adversary Proceeding or the Bankruptcy Case, and a memorandum issued by another bankruptcy judge in this district. Consequently, the Request for Judicial Notice will be granted in its entirety.

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C. Leave to Amend

Under Rule 15(a)(1)(B), a plaintiff has a one-time right to file an amended complaint "as a matter of course" 21 days after the earlier of (i) service of a responsive pleading or (ii) service of a Rule 12(b), (e) or (f) motion. Even if a plaintiff does not have the right to amend "as a matter of course," the court may grant leave to amend. Rule 15(a)(2) provides that "the court should freely give leave [to amend] when justice so requires." Dismissal without leave to amend is appropriate, however, when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

D. Jurisdiction

Bankruptcy courts have jurisdiction over all civil proceedings (1) "arising under title 11," i.e., any proceedings to enforce rights created by the Bankruptcy Code, (2) "arising in" a bankruptcy case, i.e., other proceedings that would not exist outside a bankruptcy case, such as case administration, or (3) "related to" a bankruptcy case, i.e., any proceedings the outcome of which could "conceivably" have any effect on the bankruptcy estate. *See* 28 U.S.C. § 1334(b); *In re Marshall*, 600 F.3d 1037, 1054 (9th Cir. 2010); *In re Harris*, 590 F.3d 730, 737 (9th Cir. 2009); *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988).

1. Arising Under Jurisdiction

"A matter 'arises under' the Bankruptcy Code if its existence depends on a substantive provision of bankruptcy law, that is, if it involves a cause of action created or determined by a statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

2. Arising In Jurisdiction

"A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative matter unique to the bankruptcy process that has no independent existence outside of bankruptcy and could not be brought in another forum, but whose cause of action is not expressly rooted in the Bankruptcy Code." *Id.*

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Matters that "arise under or in Title 11 are deemed to be 'core' proceedings...." *In re Harris Pine Mills*, 44 F.3d 1431, 1435 (9th Cir. 1995). 28 U.S.C. § section 157(b)(2) sets out a non-exclusive list of core proceedings, including "matters concerning the administration of the estate," "allowance or disallowance of claims," "objections to discharges," "motions to terminate, annul, or modify the automatic stay," and "confirmation of plans." Bankruptcy courts have the authority to hear and enter final judgments in "all core proceedings arising under title 11 or arising in a case under title 11...." 28 U.S.C. § 157(b)(1); *Stern v. Marshall*, 564 U.S. 462, 474, 131 S. Ct. 2594, 180 L.Ed.2d 474 (2011).

3. Related to Jurisdiction

Bankruptcy courts also have jurisdiction over proceedings that are "related to" a bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005). *See also Sanger v. Ahn*, 406 F. Supp. 3d 800, 806 (N.D. Cal. 2018), *aff'd sub nom. In re Ahn*, 804 F. App'x 541 (9th Cir. 2020) (noting that a bankruptcy court's "related to" jurisdiction "also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367"). A proceeding is "related to" a bankruptcy case if:

[T]he outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pegasus Gold Corp., 394 F.3d at 1193 (internal quotation and citation omitted) (emphasis omitted).

Here, it appears that Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that: (1) by asserting certain rights against the Property after the Discharge Order was entered, Defendant or other parties violated the discharge injunction under 11 U.S.C. § 524. Because a claim for violation of the discharge injunction involves a substantive provision of bankruptcy law, i.e., 11 U.S.C. § 524, this claim arises under the Bankruptcy Code.

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Plaintiff's two remaining claims under 15 U.S.C. §§ 1602(g) and 1641(g) do not arise under the Bankruptcy Code because they could exist in the absence of the Bankruptcy Case. However, the outcome of the litigation might conceivably have an impact on Plaintiff and the bankruptcy estate. If Plaintiff obtained a judgment for damages in connection with his claims under 15 U.S.C. §§ 1602(g) and 1641(g), there may be funds available to distribute to creditors. Consequently, the Court has subject matter jurisdiction over Plaintiff's claims under 15 U.S.C. §§ 1602(g) and 1641(g). Nonetheless, for the reasons discussed below, the Court will grant the Motion to Dismiss as to all claims.

E. Standing

11 U.S.C. § 541 provides, in relevant part, that—

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Under 11 U.S.C. § 554(c), "[u]nless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." "[A]n asset must be 'scheduled under section 521(a)(1)' to be technically abandoned." *In re Stevens*, 617 B.R. 328, 332 (B.A.P. 9th Cir. 2020). In addition, 11 U.S.C. § 554(d) provides that, "[u]nless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate." Property of the estate that is not abandoned or administered in a case remains property of the estate after the case is closed. *In re Lopez*, 283 B.R. 22, 28 (B.A.P. 9th Cir. 2002). With respect to legal actions that are property of the estate, the trustee is the real party in interest and debtors lack standing to pursue those actions on their own behalf. *See Haley v. Dow Lewis Motors, Inc.*, 72 Cal.App.4th 497, 511 (1999).

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Here, Plaintiff does not have standing to pursue his claims under 15 U.S.C. §§ 1602(g) and 1641(g). [FN 2] Plaintiff states that Defendant acquired all interest in the Property in or around January 2005. In addition, Plaintiff contends that, at some point, a dispute arose as to the Loan's accounting, and he filed the Bankruptcy Case to stop a foreclosure. Therefore, it appears that Plaintiff's claims under 15 U.S.C. §§ 1602(g) and 1641(g) (together, the "TILA Claims") arose before the Bankruptcy Case was filed.

Because the TILA Claims arose prepetition, they became property of the estate when the Bankruptcy Case was filed, even though they were not listed in Plaintiff's schedules. Moreover, because the TILA Claims were not listed in Plaintiff's schedules, the chapter 7 trustee has not abandoned or administered them. Consequently, the TILA Claims are property of the estate, and only the chapter 7 trustee has standing to pursue them.

However, because Plaintiff's claim for violation of the discharge injunction could not have accrued until after the Discharge Order was entered, that claim did not arise prepetition and Plaintiff has standing to pursue it.

F. Judicial Estoppel

According to the United States Supreme Court—

"[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." This rule, known as judicial estoppel, "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase."

Although we have not had occasion to discuss the doctrine elaborately, other courts have uniformly recognized that its purpose is "to protect the integrity of the judicial process," by "prohibiting parties from deliberately changing positions according to the exigencies of the moment."

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New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001) (internal citations omitted). Courts should consider the following factors when applying the doctrine of judicial estoppel:

First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts.

Id., at 750-51 (internal quotations omitted).

"In the bankruptcy context, a party is judicially estopped from asserting causes of action not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements." *Hamilton v. State Farm Fire & Casualty Company*, 270 F.3d 778, 783 (9th Cir. 2001). In *Hamilton*, the Court of Appeals for the Ninth Circuit judicially estopped a debtor plaintiff from pursuing claims post-discharge because: (1) the debtor asserted inconsistent positions as he failed to list his claims against the defendant as assets on his bankruptcy schedules, and later sued the defendant on the same claims; (2) the bankruptcy court accepted the debtor's prior assertions in that the bankruptcy court granted the debtor a discharge; and (3) the debtor obtained an unfair advantage by obtaining all the benefits of his chapter 7 bankruptcy without complying with his affirmative duty to disclose all assets. *Id.*, at 784-85.

Debtors must take affirmative steps to make sure their schedules are accurate and

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provide interested parties – such as the trustee and creditors – with notice. "[T]he debtor has a duty to prepare schedules carefully, completely, and accurately." *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001). While there are "no bright-line rules for how much itemization and specificity is required," a debtor still must be "as particular as is reasonable under the circumstances." *Id.*, at 946.

As previously established, the TILA Claims are property of the estate under 11 U.S.C. § 541. However, Plaintiff did not disclose the TILA Claims in his initial bankruptcy schedules. Moreover, Plaintiff has not amended his schedules to disclose the TILA Claims. As such, neither the creditors nor the chapter 7 trustee have been able to meaningfully evaluate the TILA Claims assets to determine whether or not they may be liquidated and distributed to the estate. Consequently, Plaintiff is estopped from pursuing the TILA Claims in this adversary proceeding.

With respect to Plaintiff's claim for violation of the discharge injunction, Plaintiff is not judicially estopped from asserting it here because it arose postpetition.

***G. Declaratory Judgment Under 28 U.S.C. § 2201 for Violation of the
Discharge Injunction Under 11 U.S.C. § 524***

"In a case of actual controversy within its jurisdiction" a federal court may "declare the rights and other legal relations" of the parties. 28 U.S.C. § 2201(a). "To bring a claim for declaratory relief, [a] [p]laintiff must demonstrate that (1) there is an actual case or controversy, and (2) the matter is within federal court subject matter jurisdiction." *Wanger Jones Helsley PC v. Gent*, 2019 WL 6998778, at *3 (C.D. Cal. Sept. 13, 2019) (citing *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005)). "[T]he question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

As discussed above, it appears that Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that: (1) by asserting certain rights against the Property after the Discharge Order was entered, Defendant or other parties violated the discharge injunction under 11 U.S.C. § 524; and (2) neither Defendant nor other parties do not

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have standing to assert any rights against the Property.

Under 11 U.S.C. § 524(a), a discharge "operates as an injunction against the commencement or continuation of an action ... to collect, recover or offset any [discharged] debt as a *personal liability* of the debtor." 11 U.S.C. § 524(a)(2) (emphasis added). Put another way, a discharge "operates as an injunction against a creditor's ability to proceed against a debtor *personally*." *In re Blendheim*, 803 F.3d 477, 494 (9th Cir. 2015) (emphasis added). "Discharges leave unimpaired a creditor's right to proceed *in rem* against the debtor's property." *Id.* (citing (citing *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991) ("[A] bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*")). The Bankruptcy Code "provides that a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy." *Johnson*, 501 U.S. at 83. Accordingly, even if an underlying debt was discharged in bankruptcy, the debt may still be "collected" through foreclosure.

Plaintiff contends that the lien associated with the Deed of Trust and Note is invalid because Plaintiff obtained a discharge in the Bankruptcy Case. As Defendant notes, Plaintiff misunderstands what a bankruptcy discharge accomplishes. Although the Discharge Order may have eliminated Plaintiff's personal liability on the Loan, the lien on the Property is unaffected. As such, any attempt to foreclose on the Property would not violate the Discharge Order.

Because it appears these deficiencies could not possibly be cured by amendment, the Court will grant the Motion to Dismiss as to the claim for declaratory judgment that Defendant or another party violated the discharge injunction.

H. Violation of 15 U.S.C. § 1602(g)

15 U.S.C. § 1602(g) provides, in relevant part, that—

The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is

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the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement[.]

15 U.S.C. § 1635 provides, in relevant part, that "[a]n obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first."

With respect to assignments of deeds of trust, a borrower does not have standing to challenge an assignment of a deed of trust because the beneficiary of a deed of trust—not the borrower—has the right to assign its interest in the first place and also to ratify any assignment. *Kalnoki v. First American Trustee Servicing Solutions, LLC*, 8 Cal. App. 5th 23, 43 (2017); *Turner v. Wells Fargo Bank N.A. (In re Turner)*, 859 F.3d 1145, 1149-50 (9th Cir. 2017); *Mendoza v. JPMorgan Chase Bank, N.A.*, 6 Cal. App. 5th 802, 813 (2016). Here, Plaintiff's conclusory assertions that the Note is void as a result of allegedly improper assignments do not state any claim upon which relief may be granted.

Plaintiff asserts that since the Discharge Order was entered, numerous parties have recorded void assignments against the Property. Plaintiff further alleges that no party has any interest in, or standing to assert any claim against, the Property. Plaintiff also states that no other party held the Note at any relevant time. In addition, Plaintiff represents that any claimed ownership to the Note is false and void pursuant to 11 U.S.C. § 1641(g). [FN 3]

It appears that Plaintiff seeks to void the Note on the grounds that: (1) no party is a "creditor" under 15 U.S.C. § 1602(g); (2) no party can claim ownership of the Note; and (3) that any assignments of the Deed of Trust recorded after the Discharge Order was entered are void. First, Plaintiff lacks standing to challenge any assignments of the Deed of Trust because he is not the beneficiary of any of the assignments, or the real party in interest.

Second, to the extent that Plaintiff is asserting a right to rescission under 15 U.S.C. § 1635 by way of an alleged violation of 15 U.S.C. § 1602, any asserted right Plaintiff may have had expired long before the Complaint was filed. Here, Plaintiff asserts that he obtained the Loan and executed the Note on or about November 10, 2004. Because

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the right to rescission under 15 U.S.C. § 1635 expires three years after the transaction, Plaintiff's right to rescind the Note or Deed of Trust, to the extent that he had any, that expired on or around November 10, 2007.

Consequently, the Complaint does not sufficiently allege a violation of 15 U.S.C. § 1602(g). Because Plaintiff would not be able to cure this deficiency through an amendment, the Court will grant the Motion to Dismiss as to this claim.

I. Violation of 15 U.S.C. § 1641(g)

Under TILA, in a consumer credit transaction, a creditor must make certain disclosures to the borrower no later than 30 days after a mortgage loan is sold or transferred to a third party, as follows:

(g) Notice of new creditor

(1) In general. In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

- (A) the identity, address, telephone number of the new creditor;
- (B) the date of transfer;
- (C) how to reach an agent or party having authority to act on behalf of the new creditor;
- (D) the location of the place where transfer of ownership of the debt is recorded; and
- (E) any other relevant information regarding the new creditor.

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Claims for compensatory damages, fees, and costs for TILA violations are governed by 15 U.S.C. § 1640. 15 U.S.C. § 1640(a)(1) permits recovery of "any actual damage sustained by such person as a result of the failure" to provide adequate disclosures. Put differently, a violation under 15 U.S.C. § 1641(g) requires that a plaintiff suffer actual damages from the violation.

In addition, 15 U.S.C. § 1640(e) provides that "any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation." The date of occurrence of the violation is the date the loan transaction was consummated. *See King v. State of Cal.*, 784 F.2d 910, 915 (9th Cir. 1986) ("[A]s a general rule the limitations period starts at the consummation of the transaction.").

Here, Plaintiff contends that he did not receive any notice in compliance with 15 U.S.C. § 1641(g) and seeks monetary damages "as authorized under [TILA]" (Complaint, ¶ 28). However, Plaintiff does not assert *who* allegedly failed to provide notice. Moreover, Plaintiff does not plead any facts to specify how he was actually damaged from any alleged violation of 15 U.S.C. § 1641(g). Consequently, Plaintiff has not plead sufficient facts to support a claim under 15 U.S.C. § 1641(g).

Finally, the statute of limitations bars Plaintiff's claim under 15 U.S.C. § 1641(g). Plaintiff represents that Defendant was assigned the Note and Deed of Trust on June 20, 2016. Therefore, the statute of limitations for any claim under 15 U.S.C. § 1641(g) expired on June 20, 2019, well before the Complaint was filed on April 4, 2023. Consequently, any claim under 15 U.S.C. § 1641(g) is barred by the statute of limitations. Because it does not appear that Plaintiff be able to cure this deficiency through an amendment, the Court will grant the Motion to Dismiss as to this claim.

III. CONCLUSION

The Court will grant the Motion to Dismiss.

Movant must submit the order within seven (7) days.

FOOTNOTES

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FN 1: The Bankruptcy Case was later reassigned to Hon. Victoria S. Kaufman.

FN 2: 15 U.S.C. §§ 1602(g) and 1641(g) are part of The Truth in Lending Act ("TILA") (15 U.S.C. 1601 *et seq.*).

FN 3: Plaintiff asserts a separate claim under 11 U.S.C. § 1641(g) which will be addressed separately.

Party Information

Debtor(s):

Ed Vallejo

Represented By
Thomas P Giordano - DISBARRED -

Defendant(s):

Federal National Mortgage

Represented By
Adam N Barasch

Plaintiff(s):

Ed Vallejo

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Adv#: 1:23-01010 Vallejo v. Federal National Mortgage Association, et al

- #15.00** Status conference re: Complaint for
1. Violation of discharge order and automatic stay
 2. Breach of contract
 3. Quiet title/expungement of instruments

fr. 5/31/23

Docket 1

Tentative Ruling:

See cal. no. 14.

Party Information

Debtor(s):

Ed Vallejo

Represented By
Thomas P Giordano - DISBARRED -

Defendant(s):

Federal National Mortgage

Pro Se

Plaintiff(s):

Ed Vallejo

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se